

BEFORE THE BOARD OF PUBLIC ACCOUNTANTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

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| In the matter of the |) | NOTICE OF AMENDMENT, |
| amendment of ARM 8.54.410, |) | ADOPTION AND REPEAL |
| 8.54.415, 8.54.802, 8.54.803 |) | |
| and 8.54.804, the adoption |) | |
| of NEW RULES I through IV, |) | |
| and the repeal of ARM 8.54.808, |) | |
| related to fees, amount |) | |
| of required experience, |) | |
| continuing education matters, |) | |
| and special practice permits |) | |
| for nonresident certified |) | |
| public accountants |) | |

TO: All Concerned Persons

1. On October 6, 2005, the Board of Public Accountants published MAR Notice No. 8-54-41 regarding the public hearing on the proposed amendment, adoption and repeal of the above-stated rules relating to special practice permits at page 1864 of the 2005 Montana Administrative Register, issue no. 19.

2. On October 28, 2005, at 10:00 a.m., a public hearing was held at the offices of the Board of Public Accountants, in room 471, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption and repeal of the above-stated rules. Oral and written comments were received by the Board during the comment period.

3. The following comments were received and appear with the Board's responses:

Comment 1: A commenter stated that NEW RULE I should be amended to allow CPAs from states that are not deemed substantially equivalent to demonstrate their individual qualifications and obtain a special practice permit.

Response 1: The Board does not have the statutory authority to make the suggested change. Such authority would require a legislative change. The Board intends to monitor the requests for special practice permits during the next 18 months in order to determine what, if any, problems occur with the existing law.

Comment 2: A commenter suggested that an application for a special practice permit also be deemed to be a firm registration for the applicant's firm, in order to improve efficiency.

Response 2: The Board believes that the current firm registration process is speedy and efficient. Requiring an applicant to provide firm registration information at the time of application does not improve efficiency (for either the

applicant or the Board) if the applicant is a member of an already registered firm.

Comment 3: A commenter suggested that special practice permit applications be a simple, one page document that can be filed electronically with the Board.

Response 3: A single page application, available electronically and which can be filed electronically, has already been developed by the Board.

Comment 4: A commenter requested that special practice permit applications and firm registrations become effective upon filing.

Response 4: The Board expects that most special practice permit applications will be granted on a same-day or next business day basis. However, in the event that an application is incomplete, shows that the applicant is not eligible, or the applicant does not remit the required fee, the Board believes that it can not lawfully deem such an application as granting a special practice permit.

Comment 5: A commenter stated that a "significant burden" of complying with Montana continuing education requirements will be placed on out-of-state CPAs in the case of a special practice permit holder who is from a state that does not require continuing education. The commenter noted that other states do not impose a similar requirement on practitioners who practice pursuant to "substantial equivalency" laws.

Response 5: The Board notes that Wisconsin is the only state which does not currently require CPAs to undertake continuing education. The Board further notes that under current rules, all out-of-state licensees must comply with Montana's continuing education requirements. The Board believes that continuing education is an essential component of ensuring practitioner competency after licensing. The Board also notes that it is charged with protection of the public's safety and welfare, not the convenience of the profession. The Board believes that any additional "burden" will be minimal on those few Wisconsin licensees who may seek a special practice permit in Montana.

Comment 6: A commenter suggested that submitting a copy of a firm's inspection report should be deemed to satisfy the requirements of NEW RULE III.

Response 6: The Board notes that under its existing rules, a firm that engages in the AICPA's peer review process can satisfy the profession monitoring requirements by submitting a copy of such a review.

Comment 7: Several commenters objected to the proposed elimination of the "A and A" (reporting on financial statements)

requirements as a component of required continuing education. Another commenter wrote in support of the proposed change.

Response 7: The Board recognizes that many accountants have strong feelings about whether or not 24 hours of continuing education credit on reporting on financial statements should be required for all licensees. The Board, after long discussion, originally made the proposal to eliminate the A and A requirement after hearing the arguments from public accountants whose practice does not include reporting on financial statements. Those practitioners said that requiring continuing education on a subject matter outside of the scope of their practice field was wasteful and inefficient. The Board also notes that public accountants have an ethical obligation to maintain their professional competency and not to accept engagements outside of their competency. The Board notes that practitioners whose work includes (or is perhaps limited to) reporting on financial statements will still have an ethical obligation to maintain their professional competency, and therefore may wish to take a majority of continuing education credits in that subject matter. The Board concludes that requiring public accountants to devote 20% of the required continuing education credits to an area that is outside the scope of the accountant's practice does not meaningfully protect the public that is purchasing public accounting services in Montana.

Comment 8: A commenter wrote in support of the proposed changes to ARM 8.54.415. Another commenter generally supported the proposed rule changes, without expressing a position on the proposed fees.

Response 8: The Board acknowledges the comments.

Comment 9: A commenter suggested that NEW RULE I be clarified to provide that the rule does not apply to persons preparing tax returns for either Montana residents or non-residents.

Response 9: The Board notes that while the preparation of tax returns is included within the practice of public accounting, tax return preparation is not exclusively performed by public accountants. A person may not represent her or his status as a CPA in Montana unless legally authorized to do so. Thus, if a CPA is preparing tax returns in Montana, that individual is engaged in the practice of public accounting in Montana. Accordingly, that individual must have an appropriate practice permit for that Montana practice.

Comment 10: A commenter stated that a CPA engaged in peer review of a Montana accounting firm is engaged in the practice of public accounting in Montana, and that if the CPA is from outside of Montana, NEW RULE I should apply.

Response 10: The Board agrees with the comment. The Board has

historically required that out-of-state CPA to obtain a Montana practice permit.

Comment 11: Two commenters stated that the proposed \$90 fee for the special practice permit was excessive. One of the commenters suggested that a \$25 to \$40 fee would be more appropriate.

Response 11: The Board is required by law to set fees commensurate with costs. At this point, however, it is unclear whether the \$90 fee is too high, too low, or exactly right, because the Board does not have any actual experience in determining the actual costs of all the issues raised by the special practice permit. During initial discussion regarding the proposed fee, the Board's members (as well as representatives of the profession) were of the opinion that the proposed fee was, in light of the overall cost of doing business, a nominal expense. The Board believes that Montana public accountants should not subsidize the cost of non-Montanans coming in to Montana to practice with a special permit. The Board intends to monitor the actual costs (including taking disciplinary action, where required) of the special practice permit implementation. If experience shows that the \$90 fee is higher than needed, the Board will decrease the fee to a level commensurate with costs. Likewise, if experience shows that the fee is insufficient to cover costs, the Board will raise the fee. At the present, however, the Board believes that a \$90 fee strikes a reasonable balance between not cost-shifting and not creating an economic disincentive to practice public accounting in Montana, whether as a regular permit holder or as a holder of a special practice permit.

Comment 12: A commenter stated that the proposed \$500 fee for the late filing of profession monitoring documents is excessive, and that an initial late fee of \$50 to \$100 would be more appropriate if the documents were filed within 30 days of the due date, and with the \$500 fee imposed only if the documents are more than 30 days late.

Response 12: The Board finds that a substantial amount of staff time and expense is consumed in getting profession monitoring documents from practitioners and firms that do not timely supply them to the Board. In addition to the time and expense of making sure that the documents are received by staff and distributed to the review teams, late filings also require a lot of workload juggling by staff to make sure that review teams get equitable workloads. However, because compliance, not revenue, is the Board's goal, the Board will adopt a two-tier late fee for untimely submission of the documents.

4. After fully considering the comments, the Board has amended ARM 8.54.415, 8.54.802, 8.54.803 and 8.54.804 exactly as proposed.

5. After fully considering the comments, the Board has amended ARM 8.54.410 as proposed, but with the following changes, stricken material interlined, new material underlined:

8.54.410 FEE SCHEDULE (1) through (k) remain as proposed.

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|---|----------------|
| (1) Late fee for failure to timely file profession monitoring program reports | 500 |
| <u>(i) less than 31 days late</u> | <u>100</u> |
| <u>(ii) more than 30 days late</u> | <u>500</u> |
| (2) remains as proposed. | |

AUTH: 37-50-203, 37-50-204, 37-50-323, MCA

IMP: 37-1-134, 37-50-204, 37-50-308, 37-50-314, 37-50-317, 37-50-323, MCA

6. After consideration of the comments, the Board adopts New Rules I through IV as follows:

NEW RULE I (24.201.531) SPECIAL PRACTICE PERMIT

NEW RULE II (24.201.2112) COMPLIANCE WITH CONTINUING EDUCATION FOR NONRESIDENTS

NEW RULE III (24.201.1111) PROFESSION MONITORING OF HOLDERS OF A SPECIAL PRACTICE PERMIT

NEW RULE IV (24.201.412) FEE ABATEMENT

7. The Board repeals ARM 8.54.808 as proposed.

BOARD OF PUBLIC ACCOUNTANTS
GARY KASPER, LPA, CHAIRPERSON

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternative Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State December 12, 2005